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In the Supreme Court of the United States

OCTOBER TERM, 1944,

No. 552

WILLIAM PETERSEN,

Petitioner,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents.

**BRIEF IN OPPOSITION TO PETITION FOR WRIT
OF CERTIORARI.**

THOMAS CRADOCK HUGHES,

Acting District Attorney,

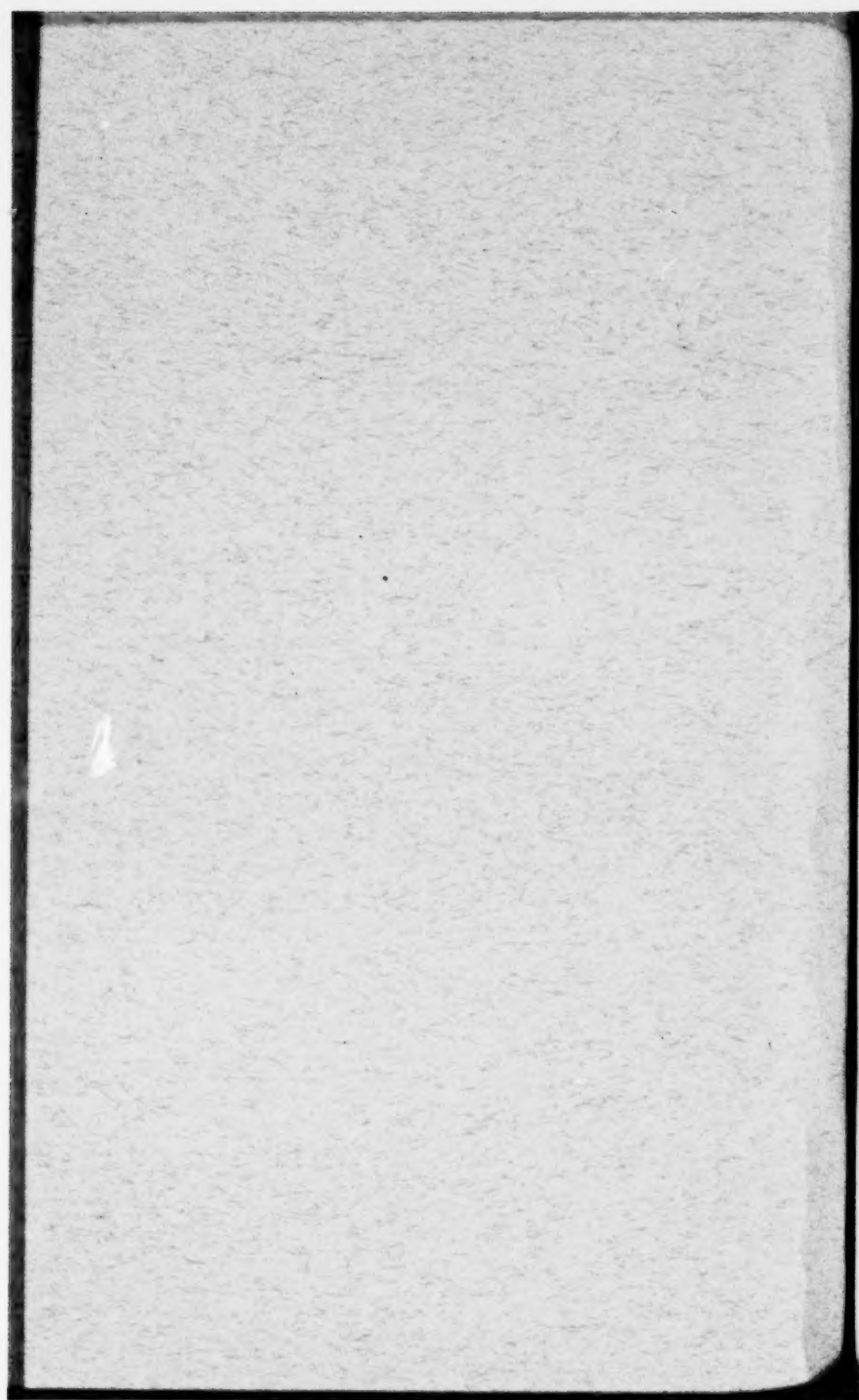
Kings County,

New York.

HENRY J. WALSH,

Assistant District Attorney,

Of Counsel.

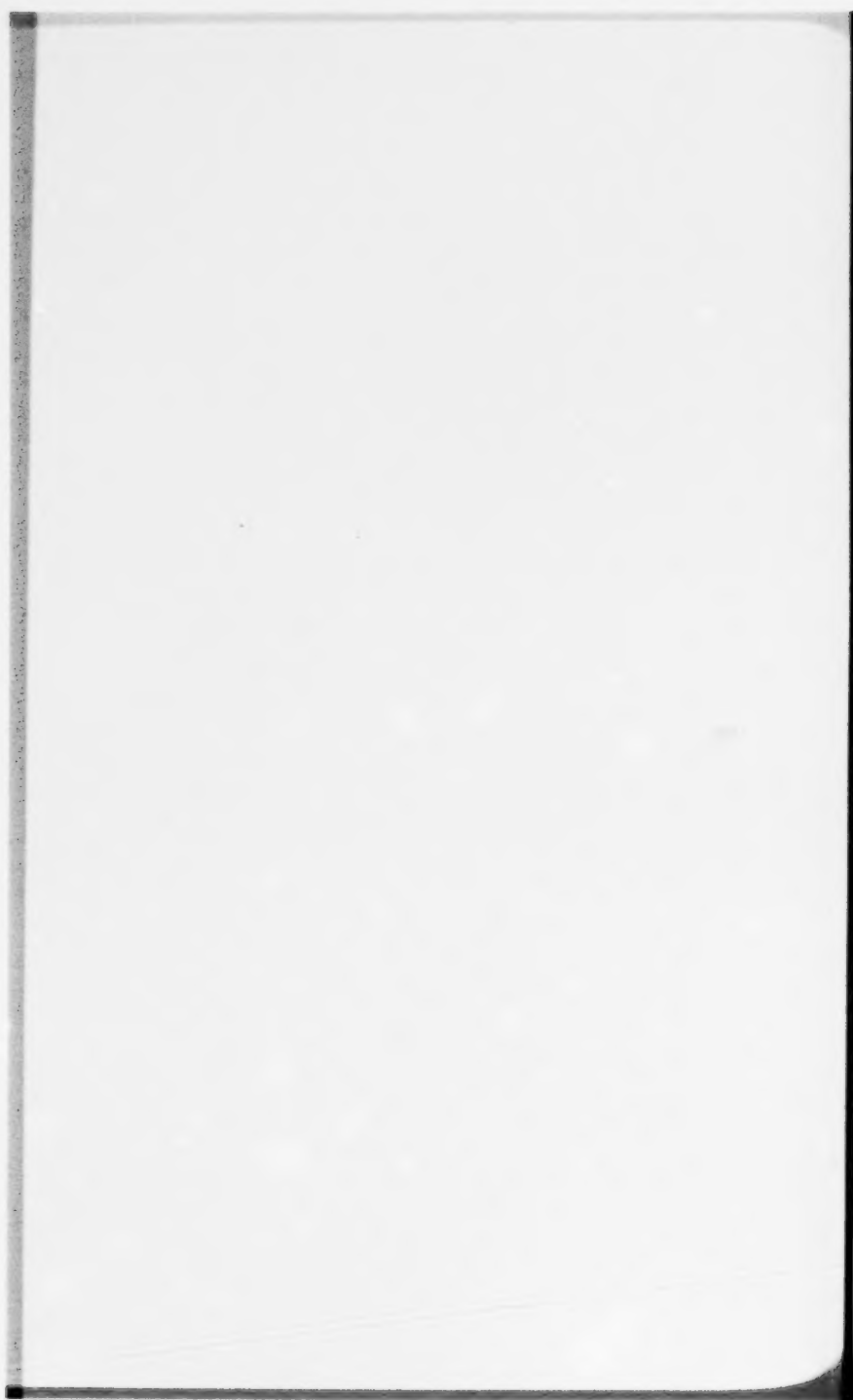


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In the Supreme Court of the United States

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WILLIAM PETERSEN,

Petitioner,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents.

Brief in Opposition to Petition for Writ of Certiorari.

Statement.

The petitioner seeks a review of the judgment of the County Court of Kings County, dated March 1, 1943, convicting him of the crime of Murder in the First Degree, and sentencing him to a term of life imprisonment. This was pursuant to the jury's recommendation.¹ The trial re-

1. Permissible under section 1045-a of the Penal Law.

sulting in the judgment began on February 1 and concluded on February 5, 1943. Upon appeal to the Supreme Court, Appellate Division, Second Judicial Department² on February 21, 1944, the judgment was affirmed, unanimously, without opinion (*People v. Petersen*, 267 App. Div. 882). Thereafter the petitioner applied to Hon. John T. Loughran, a Judge of the Court of Appeals for leave to appeal to that court.³ The application was denied on July 10, 1944.

Question Presented.

The petitioner urges "that he has been convicted for the crime of murder and has been sentenced to imprisonment for natural life as a result of a trial so violative of his constitutional rights as to be a denial of the protection of the Fourteenth Amendment of the Constitution of the United States in that he was denied due process of law."

Jurisdiction.

The jurisdiction of this court is invoked under section 237 (b) of the Judicial Code, as amended; 28 U. S. C. A., section 344 (b).

2. The only direct appeal to the Court of Appeals is in a case where the penalty is death (Code of Criminal Procedure, § 517).

3. One appeal is allowed as a matter of right. A further appeal may be had only if a Judge of the Court of Appeals or a Justice of the Appellate Division certifies that a question of law is involved which ought to be reviewed by the Court of Appeals (Code of Criminal Procedure, § 520).

Record Facts Material to the Question Presented.

General Outline of the Case.

The victim of the homicide was Catherine Watson, a woman sixty-five years of age (R. 52), who lived with her husband on the top floor of an apartment house situated in what is known as the Bay Ridge section of Brooklyn (R. 61). She was last seen alive on the morning of January 2, 1941, at between ten and ten-thirty o'clock (R. 48). At three o'clock in the afternoon the deceased's body was found lying on the floor of the living room of her apartment (R. 92-93). She had been subjected to a terrible beating. Literally, she had been massacred (R. 52-56). The immediate cause of death was a compound comminuted fracture of the skull (R. 54). A competent producing cause of death could have been blows delivered with a tire iron, twelve to fourteen inches long (R. 56). It was with such a weapon that the petitioner subsequently confessed he had slain the deceased.

The petitioner, who at the time of the trial was nineteen years of age (R. 356), was not arrested until May 11, 1942 (R. 118). He then furnished two different versions of the happening of the homicide. Originally, he placed responsibility for the crime on another man, admitting, however, that he had acted the part of a "look-out" as the second man perpetrated the deed (R. 119). We will take up his first version.

The petitioner was arrested by Detective Ambrose Rikeman. He readily admitted his complicity in the homicide, but laid the blame for the actual killing on a man named Anthony Lonardelli. As he related his connection with the case, the petitioner and Lonardelli approached the house where the deceased lived. Lonardelli entered the deceased's apartment. The petitioner remained outside

(R. 119). Later, according to the petitioner, Lonardelli "trotted" out of the house and called out to the petitioner to hurry away with him (R. 119). The two left the scene and went to a restaurant where Lonardelli presented \$75 to his companion and parted with him on the promise to meet him the following day. But not before, according to the petitioner, Lonardelli assured him (R. 119):

"That he was an accomplice to the crime and that he was in on it."

The petitioner informed Detective Rikeman and another police officer that he could locate Lonardelli through a girl, a prostitute who knew his whereabouts, who was an habitue of a bar and grill situated on Broadway, in midtown Manhattan. On three successive nights, the petitioner and the two police officers visited the vicinity of the place referred to, and remained there for hours waiting for the girl to put in an appearance (R. 120). Finally, the petitioner admitted to the police officers that he had perpetrated a hoax on them. He admitted that he did not become acquainted with Lonardelli until January, 1942, which was a year after the homicide (R. 121).

Nevertheless, the petitioner continued to adhere to his story implicating Lonardelli to other police officers. And when questioned by an assistant district attorney on the night of May 13, 1942, he persisted in holding to his false accusations against Lonardelli. If anything, at this time the petitioner embroidered the history of his relations with Lonardelli. He said he had known Lonardelli since May, 1938 (R. 179). Three days before the homicide, he said, he met Lonardelli, at noon, about a mile away from the deceased's home (R. 180). Lonardelli informed him that he had been following a woman from a bank, that she had some money and that it would be easy to "get" it (R. 180). Lonardelli entered the apartment house where the deceased lived. The petitioner sustained his role of "look-out" for

fifteen minutes (R. 183). Then Lonardelli hurried out—"trotting"—and joined the petitioner and the two hastened away and entered a restaurant where Lonardelli presented \$75 to the petitioner (R. 183). At the same time, according to the petitioner, Lonardelli revealed to him that he "had hit the woman over the head, and that she dropped and quivered" (R. 183).

On the morning of May 14, the petitioner abandoned his course of falsehood and fully described to an assistant district attorney what had happened as the deceased was slain. Arming himself with a tire iron, on the day of the homicide, the petitioner forced his way into the deceased's home. The deceased confronted him, demanding what he was doing there. He replied, he said, with "a few punches" at her face and chest. Then, he related (R. 198):

" * * * and then she was bending my back and my iron was sticking three quarters of the way out * * * and I took it and struck her twice fast, and she was stunned and as she was falling I struck her three times more, and she hit the ground with her head facing the dining room and her feet facing the settee room."

The petitioner then ransacked the apartment. He stole from a bureau drawer \$470 (R. 211). He also appropriated several articles of jewelry, none of it expensive (R. 200).

The petitioner repudiated his confession on the trial. He charged that he had been beaten into it by his police custodians. The police officers explicitly and unequivocally denied the petitioner's accusations. There were no physical marks of violence on the petitioner's person when he was received in jail (R. 530). He asked for no medical attention there (R. 524). A private citizen who encountered him on the night just preceding the confession, in the station house where the petitioner was questioned, supported the police officers (R. 515).

The trial court fully and fairly submitted the issue of the voluntariness of the confession to the jury. After the court had done so, the request was made (R. 681-682) :

"I ask your Honor to charge the jury as a matter of law that if they have a reasonable doubt as to whether or not this confession was a voluntary confession, they must vote, 'Not Guilty'."

The court's response could hardly have been more emphatic (R. 682) :

"I so charge. If the confession fails the whole case fails. I said that was the cornerstone of this case. That is plain English."

Argument.

I.

No constitutional question is presented. None was raised in the Appellate Division. The order of the Appellate Division affirming the judgment is silent on the subject.

The petitioner was there represented by an attorney assigned by the Appellate Division to protect his interests. He advanced just three points in attack on the judgment :

1. "The alleged confessions of the defendant were made under the influence of fear produced by threats and should have been excluded by the court."

2. "Error was committed by the trial court's failure to charge manslaughter in conformance with sub. 1 of sec. 1050 of the Penal Law."

3. "The judgment of conviction herein should be reversed."

The brief recited under Point I:

"It is therefore the contention of the defendant that the Court should have excluded the three alleged confessions on the ground that they were made under the influence of fear produced by threats."

II.

The petition should be denied.

Respectfully submitted,

THOMAS CRADOCK HUGHES,
Acting District Attorney,
Kings County.

HENRY J. WALSH,
Assistant District Attorney,
Of Counsel.

A p p e n d i x .

Section 1045-a. Penal Law of the State of New York.

"§ 1045-a. *Life imprisonment for felony murder; jury may recommend.*

A jury finding a person guilty of murder in the first degree, as defined by subdivision two of section ten hundred forty-four, may, as a part of its verdict, recommend that the defendant be imprisoned for the term of his natural life. Upon such recommendation, the court may sentence the defendant to imprisonment for the term of his natural life."

Section 517, New York Code of Criminal Procedure.

"§ 517. In what cases an appeal may be taken by defendant.

An appeal to the supreme court may be taken by the defendant from the judgment on a conviction after indictment, except that when the judgment is of death, the appeal must be taken direct to the court of appeals. * * *"

Section 520, New York Code of Criminal Procedure.

"§ 520. Appeal, a matter of right; one appeal; how taken.

All appeals provided for by this chapter may be taken as a matter of right. Every person convicted in a criminal action or proceeding shall have the right to have such judgment of conviction or order reviewed on appeal by an appellate tribunal as herein provided, but there shall be only one such appeal and the decision of the appellate court shall be final, and no appeal shall lie from that court to any other court except as hereinafter provided:

1. In the City of New York such appeals shall be taken as follows: * * * from a conviction by the court of general sessions of the County of New York or by a county court * * * or from the supreme court except where the penalty is death, to the Appellate Division of the Supreme Court * * *

2. * * *

3. Where an appeal has been taken and has been decided by any of the appellate tribunals referred, a further right of the appeal to the court of appeals shall lie as hereinafter prescribed, but no otherwise. If a judge of the court of appeals or a justice of the Appellate Division of the Supreme Court * * * certifies that a question of law is involved which ought to be reviewed by the court of appeals, then a further appeal on such question of law may be taken to the court of appeals.

4. * * *."

